

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

University of Southern California)	Opposition No.: 125,615
)	
Opposer,)	Serial No.: 75/358,031
)	
vs.)	Mark: "SC" (Stylized)
)	
University of South Carolina,)	
)	
Applicant.)	
)	
<hr/>		
University of South Carolina)	Opposition No.: 125,615
)	
Petitioner,)	Reg. No.: 1,844,953
)	
vs.)	Mark: SC Word Mark
)	
University of Southern California)	
)	
Registrant.)	
)	

RECEIVED 17 JUL 1996

APPLICANT AND PETITIONER'S RESPONSE TO MOTION TO DISMISS

I. INTRODUCTION

The University of Southern California's ("Registrant" or "California") motion to dismiss is another misguided effort in its overly aggressive attempt to limit the trademark rights of the State of South Carolina, through its agency, the University of South Carolina ("Petitioner" or "South Carolina"). California is simply incorrect in its assertion that this matter arises out of recent use by South Carolina of the letters "SC" in connection with its athletic programs. To the contrary, as alleged in its Answer and Counterclaim, the University of South Carolina has used this mark since at least as early as 1898, which is prior to California's use. Instead, this case arose when California filed an opposition proceeding

against South Carolina's application to register the stylized letters "SC" used by its baseball team, Serial No. 75/358,031. This was a new stylization of "SC" - not a new use of the letters "SC". While investigating California's allegations in this opposition proceeding and preparing its defenses, South Carolina uncovered grounds for cancellation of California's registration of the "SC Word Mark", U.S. Reg. No. 1,844,953.

California's motion to dismiss should be denied because it is premature and attempts to argue factual determinations couched as determinations as a matter of law and without the proper deference that must be given to South Carolina at this early stage. Specifically, California has not established that South Carolina will be unable to prove a set of facts to cancel California's "SC Word Mark" registration on the grounds that (1) the letters "SC" are a flag or insignia of the State of South Carolina; (2) the letters "SC" point unmistakably to the State of South Carolina; and (3) California committed fraud on the U.S. Patent and Trademark Office by supplying material false information in its statement of use.

II. ARGUMENT

A. APPLICABLE STANDARD FOR MOTION TO DISMISS.

When considering a Rule 12(b)(6) motion, the Court must determine whether the allegations of the complaint, taken in the light most favorable to the plaintiff, constitute a statement of a claim. Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974). In Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L. Ed. 2d 80 (1957), the United States Supreme Court held that a motion to dismiss under Rule 12(b)(6) should be granted only where "it appears beyond doubt that the plaintiff can prove no set of facts in support of [the] claim which would entitle him to relief." The Supreme Court went on to say, "[t]he issue is not

whether a plaintiff will ultimately prevail *but whether the claimant is entitled to offer evidence to support the claims.*" Id. [emphasis added].

In the context of a cancellation proceeding, the Board has held "in order to survive [a motion to dismiss], petitioner need only have alleged such facts as would, if proved, show that petitioner has standing to petition for cancellation of the registered marks and that a statutory ground for cancelling such registrations exists." Western Worldwide Enterprises Group, Inc. v. Qindao Brewery, 17 U.S.P.Q.2d 1137 (T.T.A.B. 1990); Scotch Whisky Association v. U.S. Distilled Products Co., 13 U.S.P.Q.2d 1711 (T.T.A.B. 1989); Lipton Industries, Inc. v. Ralston Purina Co., 670 F.2d 1029, 213 U.S.P.Q. 185 (C.C.P.A. 1982). Further, dismissal is appropriate only if it appears certain that the non-moving party is entitled to no relief under any set of facts which could be proved in support of its claim. Order Sons of Italy in America v. Profumi Fratelli Nostra, AG, 36 U.S.P.Q.2d 1221 (T.T.A.B. 1995); Stanspec Co. v. American Chain & Cable Co., Inc., 531 F.2d 563, 189 USPQ 420 (C.C.P.A. 1976).

B. THE QUESTION OF WHETHER THE LETTERS "SC" CONSTITUTE A FLAG OR INSIGNIA OF THE STATE OF SOUTH CAROLINA CLEARLY PRESENTS A FACTUAL DISPUTE.

All of California's arguments revolve around factual disputes between the parties. In the context of the present motion to dismiss, all factual allegations of South Carolina's Counterclaim must be examined in a light most favorable to South Carolina. Scheuer, 416 U.S. 232. Under that standard, California's assertions in its brief that South Carolina has not alleged facts sufficient to support its counterclaims under 15 U.S.C. § 1052(b) are illogical. South Carolina has explicitly alleged in its Counterclaim that the letters "SC" consist of a flag or insignia that has been adopted and utilized by the State of South Carolina

since as early as 1775. (Counterclaim ¶¶ 28-30). South Carolina has further alleged that it has been damaged by California's registration of the "SC" mark. (Counterclaim ¶ 33). Therefore, without going any further, California's Motion to Dismiss should be denied because South Carolina has clearly alleged the necessary elements for a proper cancellation pursuant to 15 U.S.C. § 1052(b).

California contends that, as a matter of law, the "insignia" language of 15 U.S.C. 1052(b) only applies to graphic elements that are similar in intent and use to a state coat of arms and that the letters "SC" cannot qualify for protection. This is incorrect. It has been held that letters themselves may indeed form an insignia. *See e.g. Ives Laboratory v. Darby Drug Co.*, 638 F.2d 538, 540, fn 4 (2nd Cir. 1981), *reversed on other grounds* ("Inkwood likewise began labeling its capsules with the insignia 'NDC 258' in small letters."); *L.G. Balfour v. FTC*, 442 F.2d 1, 7 (7th Cir. 1971)(distinctive insignia was formed by Greek letters representing a fraternity name); *In re United States Rubber Co.*, 49 App. D.C. 376, 265 F. 1016, 1920 U.S. App. LEXIS 1506 (D.C. Ct. App. 1920), *discussed infra*.

California relies upon *U.S. Navy v. United States Manufacturing Co.*, 2 U.S.P.Q.2d 1254 (T.T.A.B. 1987) as its sole support for its argument that letters may not form an insignia. To begin, South Carolina has alleged in its Counterclaim that the mark "SC" has been used as a emblem of State authority on military uniforms, flags and other official state items. (*See* Counterclaim ¶ 28). This pleading entirely defeats California's argument.

However, even if South Carolina's use of the "SC" mark consists only of the letters, the *U.S. Navy* case does not preclude such use as insignia. California misrepresents

the Board's holding on this point.¹ The Board in U.S. Navy held that because the "USMC" letters represented only a small subsection of the United States government, the mark was not protected under 15 U.S.C. § 1052(b). In explaining its rationale, the Board stated that, "Even if the letters could be construed as an insignia, opposer has not shown that they would be seen as an insignia of the United States . . . [T]hese letters identify people and things associated with a particular agency within a department of the executive branch of the government, rather than function as an insignia of national significance representing the authority of the government or the nation as a whole." U.S. Navy, 2 U.S.P.Q.2d at 1256-1257. It is first significant to note from this passage that, contrary to California's assertion throughout much of its brief, the Board did not automatically exclude the possibility that letters may form an insignia deserving of protection under 1052(b). Rather, the Board inferred that the "USMC" letters did not form an insignia *in this instance*. However, the more important distinction between U.S. Navy and the present case is that the letters "SC" represent the name of the *entire* State of South Carolina, and not a mere subsection thereof. Although, as U.S. Navy points out, insignia of governmental subdivisions may not be granted protection, 15 U.S.C. § 1502(b) explicitly grants protections to the insignia of "any State." Naturally then, insignia of the State of South Carolina are deserving of protection. As such, California is overapplying the holding of the U.S. Navy case to suit its own purposes.

In fact, the initials of governmental entities have been held to be covered "insignia." In an extremely relevant decision, the Court of Appeals of the District of Columbia ruled that the letters "U.S.", as the most prominent feature in a mark, could not be

¹ It is also important to note that the U.S. Navy case was not decided by the Board as a matter of law and that the Board reviewed a "voluminous" record before rendering its decision on the facts of the case.

registered. In re United States Rubber Co., 49 App. D.C. 376, 265 F. 1016, 1920 U.S. App. LEXIS 1506 (D.C. Ct. App. 1920). In United States Rubber, a putative registrant was attempting to register a trademark for shoes with the letters "U.S." written prominently on a disc. Applying identical statutory language to that which is presently contained in 15 U.S.C. § 1052(b), the Court held that the meaning of "U.S." was too clearly established to permit the registration of a mark having that as the most prominent feature. *Id.*

The additional case law cited by California in support of its arguments under 15 U.S.C. § 1052(b) is inapposite to the case at bar. California has cited Vuitton Et Fils S.A. v. J. Young Enter., Inc., 644 F.2d 769 (9th Cir. 1981) to stand for the proposition that a challenged mark must be an official symbol of the government. However, a close reading of the Vuitton case reveals that the insignia at issue in that case differed in appearance from the French national symbol and therefore could not be cancelled under 1052(b). Vuitton, 644 F.2d at 775. Only if South Carolina was contesting the registration of the letters "SB" or "SD" as a trademark due to their respective similarity with the "SC" mark, would the Vuitton case have application. However, because the "SC" letters registered by California are *exactly* the same as those previously adopted and utilized by the State of South Carolina, the applicability of the Vuitton case is destroyed.

California has cited the Heroes, Inc. v. Boomer Esiason Hero's Foundation, 43 U.S.P.Q. 2d 1193 (D.D.C. 1997) to argue that a mark must have been adopted with a "message-conveying function" about the authority of the governmental entity to deserve protection under 15 U.S.C. § 1052(b). This proposition only supports South Carolina's assertion. Indeed, the letters "SC" have been consistently used to serve a message-carrying function by South Carolina. Specifically, it is alleged that the mark "SC" has been adopted

and continuously used by the government of South Carolina for over 200 years on uniforms, flags and by through other official State uses. (Counterclaim ¶¶ 28-29). Such use of the letters "SC" is far more concrete and official than the petitioner's claim in Heroes, Inc. that the United States Capitol building or the D.C. Metropolitan Police Department Badge was insignia.

Lastly, California improperly seeks to introduce two factual documents in support of its motion to dismiss. First, California argues that there are numerous existing registrations which merely contain the letters "SC". The Board cannot take judicial notice of such bald assertions contained in third-party registrations. TMBP § 712.01; Cities Service Co. v. WMF of America, Inc., 199 U.S.P.Q. 493 (T.T.A.B. 1978). As such, it has been established that:

[A] party may not make a third-party registration of record simply by introducing a list of third-party registrations wherein it appears; or by filing a trademark search report wherein the registration is mentioned; or by filing a printout, from a private company's data base, of information about the registration; or by filing a notice of reliance together with a reproduction of the mark as it appeared in the Official Gazette for purposes of publication; or by referring to the registration in its brief or pleading (the Board does not take judicial notice of registrations residing in the PTO).

TMBP § 703.02(b).

Moreover, even if considered by the Board, many, if not all, of the registrations cited by California are for stylized versions of the letters "SC" or contain additional characters, such as a hyphen. (See Representative Sample of Trademark Records, attached hereto as Exhibit A). South Carolina has never taken a position that would require cancellation of these registrations containing the letters "S" and "C", which are not similar to insignia of the State of South Carolina. It is disingenuous of California to suggest otherwise.

Second, California argues that South Carolina stated in a response to an office action received on the application to register its stylized "SC" mark, Serial No. 75/358,031, that the letters "SC" were arbitrary. This one sentence is taken out of context. In this office action, South Carolina was explicitly referring to "the mark", i.e., the stylized version of the letters "S" and "C". Moreover, the other four pages of the response establish that the University of South Carolina had extensively used the letters "SC" in connection with its sports teams for many years.

C. THE QUESTION OF WHETHER THE LETTERS "SC" ARE UNIQUELY OR UNMISTAKABLY ASSOCIATED WITH THE STATE OF SOUTH CAROLINA ALSO PRESENTS A FACTUAL DISPUTE.

South Carolina has alleged sufficient facts in its Counterclaim under 15 U.S.C. § 1052(a) to defeat California's Motion to Dismiss. South Carolina has alleged that the "SC" mark points uniquely and unmistakably to the State of South Carolina. (Counterclaim ¶ 37). Further, South Carolina has asserted that the registration of the letters in U.S. Registration No. 1,844,953 falsely suggests a connection with an institution or national symbol. (Counterclaim ¶ 38). Finally, South Carolina has alleged that it has been damaged by California's registration. (Counterclaim ¶ 39). Once again, based upon these allegations alone, South Carolina has stated an actionable claim under 1052(a) even under the precedent cited by California in its brief. By viewing South Carolina's allegations in a favorable light, California's Motion to Dismiss must be denied.

It is clear that the basis of a cause of action under 1052(a) hinges upon the level of recognition and affiliation association with a disputed mark. Here, the dispositive question on the issue of South Carolina's counterclaim will focus on whether the letters "SC" uniquely

and unmistakably point to the State of South Carolina. In other words, a decision on the merits will hinge upon the strength of affiliation of the "SC" mark with the State of South Carolina. There could not be a clearer example of a purely factual dispute. Further, none of the cases cited by California allow such a determination to be made as a matter of law on a motion to dismiss. See e.g. In re Nuclear Research Corp., 16 U.S.P.Q.2d 1316 (T.T.A.B. 1990) (Decision rendered after ex parte appeal briefing); Buffett v. Chi-Chi's, Inc., 226 U.S.P.Q. 438 (T.T.A.B. 1985) (Decision rendered on motion for summary judgment); University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc., 703 F.2d 1372 (Fed. Cir. 1983) (Decision rendered after trial).

California baldly argues, as a matter of law, that since there are other registrations of marks containing the letters "SC" they cannot uniquely identify the government of South Carolina. However, as discussed by the Board in In re Horwitt, all this establishes is that the letters "SC" are not "per se precluded by Section 2(a)." 125 U.S.P.Q. 145 (T.T.A.B. 1960) (Applicant submitted more than ninety registration issued to other marks consisting of the letters "U.S."). Thus, the existence of other registrations does not, as a matter of law, preclude South Carolina's claim that the letters "SC" may point uniquely to it. California has not and cannot cite any case law to the contrary.

Moreover, as discussed above, use of this evidence is improper. However, if considered, most, if not all, of these registrations are for stylized versions of the letters "SC", which South Carolina does not claim falsely suggest a connection to it. On the other hand, California has claimed in its opposition proceeding that its use of the word mark, or the letters "SC" in U.S. Reg. 1,844,953 is likely to be confused with South Carolina's use of the letters

"SC." This supports the position that California's registration of the word mark letters "SC" suggests a connection between the two entities.²

As recited in its pleadings, the State of South Carolina has a long history of use of the letters "SC" throughout its past. Since 1775, South Carolina has adopted "SC" for use in various capacities. Incredibly, California suggests in its brief that the letters "SC" do not suggest an affiliation with South Carolina. (Motion to Dismiss, p. 12). Considering only the wide use of state abbreviations, this is an absurd argument. This is especially true in the case of "two-word state names" where, in every instance, the letters used for the common abbreviation are the first letters of each word (SC-South Carolina; NC-North Carolina; RI-Rhode Island; NH-New Hampshire; NY-New York; NJ-New Jersey; ND-North Dakota; SD-South Dakota). Based solely on the use of "SC" as an abbreviation, the mark standing alone has a unique and primary association with South Carolina.

California has attempted to mischaracterize South Carolina's argument by stating that it would require the cancellation of numerous marks. At this point, it must be stated that South Carolina does not intend for any marks, other than the one fraudulently procured by California, to be cancelled. None of the other possessors of marks including the letters "SC" have attempted to preclude either South Carolina from using the letters "SC." As a result, any unfounded leaps in logic attempted by California in the present matter relating to the cancellation of marks outside of this proceeding are both irrelevant and inflammatory.

² Here, South Carolina only challenges California's word mark registration of the letters "SC", which it has sought to prevent the State of South Carolina from using. South Carolina does not take the position that other stylized uses of the letters "SC" falsely suggest a connection to it. Likewise, South Carolina does not take the position that there is a likelihood of confusion between its use of the stylized letters "SC" and California's marks.

D. SOUTH CAROLINA HAS SUFFICIENTLY PLED A CAUSE OF ACTION FOR FRAUDULENT REGISTRATION.

To survive California's motion to dismiss its fraud counterclaim, all South Carolina need do is "to allege properly the elements of fraud." The Ohio State University v. Ohio University, 51 U.S.P.Q.2d 1289, 1999 T.T.A.B. LEXIS 134 at *13 (T.T.A.B. 1999). The elements for cancellation based on fraud on the U.S. Patent and Trademark Office require that the statement be (1) false, (2) a material representation, and (3) made knowingly. Mister Leonard, Inc. v. Jacques Leonard Couture, Inc., 23 U.S.P.Q.2d 1064, 1992 T.T.A.B. LEXIS 8 at *5 (T.T.A.B. 1992), *citing*, Toores v. Cantine Torresella S.R.L., 808 F.2d 46, 48 (Fed. Cir. 1986). Allegations of fraud may be pleaded upon information and belief. 3 J. Thomas McCarthy, McCarthy of Trademarks and Unfair Competition § 20:58; Saks, Inc. v. Saks & Co., 141 U.S.P.Q. 307 (T.T.A.B. 1964). Also, Rule 9(b) of the Federal Rules of Civil Procedure requires only that the circumstance surrounding fraud be pled with particularity. "Malice, intent, knowledge and other condition of mind of a person may be averred generally." Fed. R. Civ. P. Rule 9(b). South Carolina's fraud claim meets these requirements.

In its Counterclaim, South Carolina has alleged that a false statement was made in connection with California's intent to use application for the letters "SC", Serial No. 74/094,681 filed on September 5, 1990. (Counterclaim ¶ 19). In particular, South Carolina alleges that on or about January 19, 1994, California filed a statement of use, which was a statement under oath to the U.S. Patent and Trademark Office that it had, in fact, first used the mark in 1978 "in commerce *on all of the goods*" contained in International classes 6, 18, 24 and 25. (Counterclaim ¶20).

This statement is false because California could not have filed an intent to use application if it had used the mark in commerce on all of the goods identified in the application in 1978 - 12 years earlier. Pursuant to 37 C.F.R. § 2.88(c), if more than one item of goods is specified in a statement use, California was under an affirmative duty to identify the particular item to which the dates of use applied. This identical requirement is found in Section 903.09 of the Trademark Manual of Examining Procedure which requires that "where the dates of use do not pertain to all items, the particular item to which they do pertain should be designated." T.M.E.P. § 903.09. California simply cannot deny that the information in the statement of use was false and misleading and was made ever more so by California's claim of having first used the mark in 1927.

In its Counterclaim, South Carolina alleges that this statement of use contained information material to the application and that the U.S. Patent and Trademark Office relied upon this statement in issuing U.S. Registration No. 1,844,953. Without agreeing to South Carolina establishing proof of such, at a pleadings level this element is conceded by California in its brief: "If these allegations were true, [California] agrees that the alleged facts would give rise to at least a question about the nature of California's actions." (Motion to Dismiss at p. 21).

The gaping inconsistency in the statement of use and the date of actual use raises serious and material issues regarding U.S. Reg. 1,844,953. For instance, how could an entity file an intent to use application and then claim to have used the mark on all goods covered by the application for over 60 years? Additionally, this same date of use discrepancy is supported by California's second application to register the letters "SC" for the same goods. However, the date of use claim in this application is after the date of application that matured into U.S.

Reg. 1,844,953. (See California Trademark Record, attached hereto as Exhibit B). South Carolina believes that the facts once developed through discovery may establish that California did not begin using the letters "SC" in earnest as a trademark until 1993 or 1994. Moreover, had the letters "SC" not have been used in connection with all of the goods cited in its application then U.S. Reg. 1,844,953 should never had issued.

California attempts to argue that even it had committed fraud by filing an false statement of use, since the false information pertained to dates of use, it does not affect the validity of the registration. However, the one case cited by California applies only to use-based applications. See CarX Serv. Sys., Inc. v. Exxon Corp., 215 U.S.P.Q. 345 (T.T.A.B. 1982). Moreover, this case holds that a misstatement of the date of first use is fatal unless "there has been valid use of the mark prior to the filing date." Id. at 351. With an intent to use application, such as California's here, it is impossible to assume that California made valid use of the mark in connection with all goods prior to the filing date. To assume otherwise raises the question of why California filed an intent to use application in the first place. In sum, it oversimplifies South Carolina's fraud claim to assume that the fraud lies only with a mistaken date of use. Since California filed an intent to use application, it is implicit that when filing in 1990 it had not used the mark "SC" on some of the goods contained in its application. However, its statement of use affirms that the mark had been used on all goods for years. This discrepancy cannot be explained away as a matter of law as California asserts.

California next attempts to argue that, as a matter of law, the U.S. Patent and Trademark Office could not have relied upon its false statement of use. California argues that since the U.S. Patent and Trademark Office did not catch the inconsistency in the intent to use application and the dates of use contained in the statement of use that they could not have

relied upon the false information in the statement of use. The primary problem with this theory is that it places responsibility of complying with trademark rules on the U.S. Patent and Trademark Office, and not the applicant. Further, it assumes that U.S. Patent and Trademark Office was aware of this inconsistency. Moreover, the U.S. Patent and Trademark Office statement of use examiner would not have been aware of California's second application to register the letters "SC" for the same goods claiming a date of first use in commerce of 1994.

South Carolina has sufficiently pled the required elements of fraud with particularity. The remaining elements of intent and scienter have been properly pled in its Counterclaim. (Counterclaim ¶¶ 21-23). As a result, California's motion to dismiss South Carolina's fraud claim should not be granted.

III. CONCLUSION

Based upon the foregoing, California's motion to dismiss should be denied. California has sought to improperly argue critical factual determinations as mere matters of law. California has not established that South Carolina can prove no set of facts supporting its claim for cancellation.

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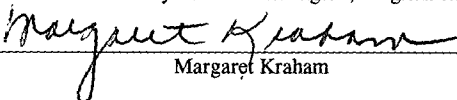
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12/02, 2002

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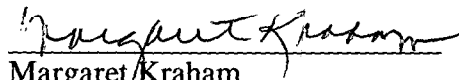
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough, L.L.P., attorneys for Applicant do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Postal Service First Class Mail, with proper postage thereon, to the following address(es):

Pleadings:

**APPLICANT AND PETITIONER'S RESPONSE TO
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Word Mark	S C
Goods and Services	IC 042. US 100 101. G & S: RESTAURANT SERVICES, AND HOTEL, RESERVATION AND RESORT HOTEL SERVICES. FIRST USE: 19970900. FIRST USE IN COMMERCE: 19970900
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	260126 260127 261121
Serial Number	75616655
Filing Date	January 7, 1999
Published for Opposition	June 6, 2000
Registration Number	2380630
Registration Date	August 29, 2000
Owner	(REGISTRANT) Silvercreek Holding Co., Inc. DBA Silver Creek Holdings CORPORATION COLORADO 100 Village Road, P.O. Box 1110 Silver Creek COLORADO 80446
Assignment Recorded	ASSIGNMENT RECORDED

Attorney of Record	JOHN R POSTHUMUS
Description of Mark	The mark consists, in part, of the letter "S", and the letter "C" with lines designed to look like rays of sunlight.
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark	S-C
Goods and Services	IC 006. US 002 012 013 014 023 025 050. G & S: metal nuts. FIRST USE: 19951117. FIRST USE IN COMMERCE: 19951117
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75532682
Filing Date	August 7, 1998
Published for Opposition	August 31, 1999
Registration Number	2294312
Registration Date	November 23, 1999
Owner	(REGISTRANT) SPS Technologies, Inc. CORPORATION PENNSYLVANIA Jenkintown Plaza 101 Greenwood Avenue Suite 470 Jenkintown PENNSYLVANIA 19046
Attorney of Record	JAMES D DEE
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Word Mark S C

Goods and Services IC 037. US 100 103 106. G & S: Consulting services relative to the establishment of specifications for materials to be used in the original construction or repair of public and private buildings, dams, bridges, water and waste treatment plants and similar structures. FIRST USE: 19760800. FIRST USE IN COMMERCE: 19760800

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 261121

Serial Number 75519832

Filing Date July 15, 1998

Published for Opposition March 28, 2000

Registration Number 2359261

Registration Date June 20, 2000

Owner (REGISTRANT) ConSpec Associates, Inc. CORPORATION CONNECTICUT P.O. Box 323, Fair Haven Station New Haven CONNECTICUT 06513

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PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	TOP	HELP
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Electronic Search System (TESS)

TESS was last updated on Fri Nov 29 04:35:15 EST 2002

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Record 1 out of 1

Check Status

(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)



Word Mark SC

Goods and Services IC 014. US 027 028. G & S: MEN'S AND WOMEN'S JEWELRY MADE OF GOLD AND STERLING SILVER, WATCHES, WOMEN'S COSTUME JEWELRY AND CHILDREN'S PRECIOUS METAL JEWELRY. FIRST USE: 19850800. FIRST USE IN COMMERCE: 19850800

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 032301 032324

Serial Number 73692464

Filing Date October 29, 1987

Published for Opposition March 22, 1988

Registration Number 1492152

Registration Date June 14, 1988

Owner (REGISTRANT) SARAH CONVENTRY, INCORPORATED CORPORATION
DELAWARE 65 EAST 55TH STREET NEW YORK NEW YORK 10022

(LAST LISTED OWNER) LIFESTYLE BRANDS, LTD. CORPORATION BY

CHANGE OF NAME FROM DELAWARE 680 N. LAKE SHORE DRIVE
CHICAGO ILLINOIS 60611

**Assignment
Recorded** ASSIGNMENT RECORDED
**Attorney of
Record** DAVID GOLDBERG
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
**Live/Dead
Indicator** LIVE

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	TOP	HELP
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Trademark Electronic Search System (TESS)

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PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	BOTTOM	HELP	PREV LIST
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				

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OR

[Jump](#)to record: **Record 3 out of 3**[Check Status](#)

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**Word Mark**

SC

Goods and Services

IC 036. US 102. G & S: FINANCIAL SERVICES-NAMELY, BANKING SERVICES AND ISSUANCE OF CREDIT CARDS. FIRST USE: 19721030. FIRST USE IN COMMERCE: 19740300

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code

261101 261508 261512 261528 270301

Serial Number

73051695

Filing Date

May 7, 1975

Registration Number

1049198

Registration Date

September 28, 1976

Owner

(REGISTRANT) STANDARD CHARTERED BANK LIMITED CORPORATION
UNITED KINGDOM 10 CLEMENTS LANE, LOMBARD ST. LONDON EC4N
7AB ENGLAND

(LAST LISTED OWNER) STANDARD CHARTERED PLC CORPORATION BY

CHANGE OF NAME FROM UNITED KINGDOM 1 ALDERMANBURY
SQUARE LONDON EC2V SB ENGLAND

**Assignment
Recorded** ASSIGNMENT RECORDED

**Attorney of
Record** KENNETH B GERMAIN

**Description of
Mark** THE MARK CONSISTS OF THE LETTERS "SC."

Type of Mark SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 15.

Renewal 1ST RENEWAL 19970130

**Live/Dead
Indicator** LIVE

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE LIST	TOP	HELP	PREV LIST
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				



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Record 1 out of 1

[Check Status](#)

(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)



Word Mark	SC
Goods and Services	IC 036. US 100 101 102. G & S: providing insurance agency services in the fields of commercial, personal, property and casualty insurance services and insurance brokerage services. FIRST USE: 19880400. FIRST USE IN COMMERCE: 19880400
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	76287571
Filing Date	July 19, 2001
Published for Opposition	April 9, 2002
Registration Number	2588206
Registration Date	July 2, 2002
Owner	(REGISTRANT) DBH Global Inc. CORPORATION SOUTH CAROLINA P O BOX 6126 Hilton Head Island SOUTH CAROLINA 299386126
Attorney of Record	Sara A. Centioni
Type of Mark	SERVICE MARK
Register	PRINCIPAL

**Live/Dead
Indicator** LIVE

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	TOP	HELP
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Record 1 out of 1

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Word Mark	SC
Goods and Services	IC 007. US 019 023. G & S: aircraft engine gearbox assemblies; drives, lubricators, and mountings for aircraft engine gearbox assemblies; and aircraft engine compressor air inlets. FIRST USE: 19760125. FIRST USE IN COMMERCE: 19760125
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	74801393
Filing Date	July 13, 1992
Published for Opposition	October 12, 1993
Registration Number	1814730
Registration Date	January 4, 1994
Owner	(REGISTRANT) Soloy Corporation CORPORATION WASHINGTON 450 Pat Kennedy Way, S.W. Olympia WASHINGTON 98502
Description of Mark	The mark consists of the stylized letters "SC" forming an ornithic head and torso.
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).

**Live/Dead
Indicator** LIVE

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	TOP	HELP
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Word Mark	SC
Goods and Services	IC 025. US 022 039. G & S: footwear. FIRST USE: 20001200. FIRST USE IN COMMERCE: 20010100
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	260302 260321
Serial Number	76285231
Filing Date	June 19, 2001
Filed ITU	FILED AS ITU
Published for Opposition	November 20, 2001
Registration Number	2599410
Registration Date	July 23, 2002
Owner	(REGISTRANT) Street Cars, Inc. CORPORATION MASSACHUSETTS 7801 Mesquite Bend Drive, Suite 110 Irving TEXAS 75063
Attorney of Record	Michele P. Schwartz
Type of Mark	TRADEMARK

Register PRINCIPAL
**Live/Dead
Indicator** LIVE

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CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				

Logout

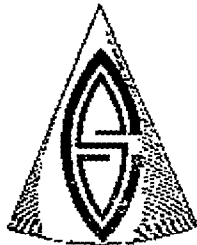
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StartList At:

OR

Jumpto record: **Record 3 out of 3****Check Status**

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**Word Mark**

S C

Goods and Services

IC 014 006. US 014. G & S: Precious Metals in the Form of Tubes, Plates, and Wire.
FIRST USE: 19210700. FIRST USE IN COMMERCE: 19210700

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code

260311 260525 261903

Serial Number

71193991

Filing Date

March 18, 1924

Registration Number**0188348****Registration Date**

August 26, 1924

Owner

(REGISTRANT) Cohn, Sigmund INDIVIDUAL UNITED STATES 44 Gold St.
New York NEW YORK

(LAST LISTED OWNER) Sigmund Cohn Corp. CORPORATION NEW YORK
Mt. Vernon NEW YORK

Type of Mark TRADEMARK
Register PRINCIPAL
Renewal 3RD RENEWAL 19840826
Live/Dead Indicator LIVE

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	TOP	HELP	PREV LIST
CURR LIST	NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC				



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Record 1 out of 1

[Check Status](#)*(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)*

Word Mark	S C
Goods and Services	IC 010. US 044. G & S: Sterile and Non-Sterile Disposable Dental, Surgical and Veterinary Instruments and Acrylics, Alloys and Cements. FIRST USE: 19701115. FIRST USE IN COMMERCE: 19701115
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	261101
Serial Number	73265038
Filing Date	June 5, 1980
Published for Opposition	February 24, 1981
Registration Number	1154791
Registration Date	May 19, 1981
Owner	(REGISTRANT) Stratford-Cookson Company CORPORATION DELAWARE 237 Jackson St. Newnan GEORGIA 30264 (LAST LISTED OWNER) DARBY DENTAL SUPPLY CO., INC. CORPORATION BY ASSIGNMENT, BY ASSIGNMENT, BY ASSIGNMENT

NEW YORK 865 MERRICK AVENUE WESTBURY NEW YORK 11590

**Assignment
Recorded**

ASSIGNMENT RECORDED

**Attorney of
Record**

VINCENT J. HANDAL, JR.

Type of Mark

TRADEMARK

Register

PRINCIPAL

Affidavit Text

SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20010726.

Renewal

1ST RENEWAL 20010726

**Live/Dead
Indicator**

LIVE

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3



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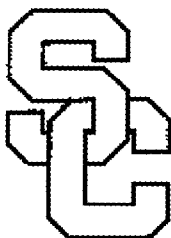
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TESS was last updated on Sat Nov 30 04:10:53 EST 2002

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Record 1 out of 1

[Check Status](#)*(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)*

Word Mark S C
Goods and Services

IC 012. US 019 021 023 031 035 044. G & S: Metal frames for metal license plates; and metallic car emblems. FIRST USE: 19930000. FIRST USE IN COMMERCE: 19940000

IC 016. US 002 005 022 023 029 037 038 050. G & S: Decals; folders; 3-ring binders; personal organizers; calendars; pencils; pens; erasers; pencil sharpeners, pen or pencil holders; desktop business card holders; note paper; wrapping paper; paper napkins; and paper tablecloths. FIRST USE: 19930000. FIRST USE IN COMMERCE: 19940000

IC 018. US 001 002 003 022 041. G & S: Umbrellas; luggage, namely, tote bags, hand luggage, garment bags and overnight bags; shoe bags for travel; fanny packs; toiletry bags sold empty; briefcases; backpacks; duffel bags; wallets; business card cases; luggage tags; animal leashes; and dog collars. FIRST USE: 19930000. FIRST USE IN COMMERCE: 19940000

IC 021. US 002 013 023 029 030 033 040 050. G & S: Porcelain and glass mugs; cups; drinking glasses; shot glasses; commemorative and decorative plates; coasters; paper plates; thermal insulated containers for food or beverage; portable beverage coolers; plastic sports bottles sold empty; and pet bowls. FIRST USE: 19930000. FIRST USE IN COMMERCE: 19940000

IC 024. US 042 050. G & S: Towels; stadium blankets; cloth pennants; and cloth flags. FIRST USE: 19930000. FIRST USE IN COMMERCE: 19940000

IC 028. US 022 023 038 050. G & S: Sporting goods, namely, baseballs, footballs, golf balls, golf tees, golf bags, putters, golf club covers, racket covers, flying discs, and foam fingers; arcade-type electronic video games; playthings, namely, plush toys, and ride-on toys; playing cards. FIRST USE: 19930000. FIRST USE IN COMMERCE: 19940000

IC 035. US 100 101 102. G & S: On-line retail store services featuring men's, women's and children's clothing, footwear, hats, accessories, sporting goods, gifts and novelty items. FIRST USE: 19930000. FIRST USE IN COMMERCE: 19940000

IC 041. US 100 101 107. G & S: Entertainment services, namely, conducting athletic competitions; organizing intercollegiate, community and national sporting and cultural events; sports instruction; and providing musical, band, dance, theatrical and dramatic performances. FIRST USE: 19930000. FIRST USE IN COMMERCE: 19940000

IC 025. US 022 039. G & S: Clothing, namely, t-shirts, sweatshirts, polo shirts, warm-up suits, jackets, rain ponchos, sweaters, jerseys, tank tops, shorts, sport shirts, baseball shirts, basketball jerseys, golf sweaters, night shirts, boxer shorts, socks, hats, caps, sport caps, visor caps, beanies and ties. FIRST USE: 19930000. FIRST USE IN COMMERCE: 19940000

**Mark Drawing
Code**

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 76374729

Filing Date February 22, 2002

**Published for
Opposition** November 12, 2002

Owner (APPLICANT) University of Southern California NON-PROFIT CORPORATION
CALIFORNIA University Park ADM 352 Los Angeles CALIFORNIA 900895013

**Prior
Registrations** 1844953

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

**Live/Dead
Indicator** LIVE

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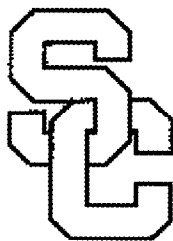
Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 12/02/2002 13:36:59 ET

Serial Number: 76374729

Registration Number: (NOT AVAILABLE)

Mark



(words only): S C

Current Status: Application has been published for opposition.

Date of Status: 2002-11-12

Filing Date: 2002-02-22

The Information will be/was published in the Official Gazette on 2002-11-12

Registration Date: (DATE NOT AVAILABLE)

Law Office Assigned: TMEG Law Office 104

Attorney Assigned:

COOPER CHRISTINE H Employee Location

Current Location: 650 -Publication And Issue Section

Date In Location: 2002-10-01

CURRENT APPLICANT(S)/OWNER(S)

1. University of Southern California

Address:

University of Southern California

University Park ADM 352

Los Angeles, CA 900895013

United States

State or Country Where Organized: California

Legal Entity Type: Other

GOODS AND/OR SERVICES

Metal frames for metal license plates; and metallic car emblems

International Class: 012

First Use Date: 19930000

First Use in Commerce Date: 19940000

Basis: 1(a)

Decals; folders; 3-ring binders; personal organizers; calendars; pencils; pens; erasers; pencil sharpeners, pen or pencil holders; desktop business card holders; note paper; wrapping paper; paper napkins; and paper tablecloths

International Class: 016

First Use Date: 19930000

First Use in Commerce Date: 19940000

Basis: 1(a)

Umbrellas; luggage, namely, tote bags, hand luggage, garment bags and overnight bags; shoe bags for travel; fanny packs; toiletry bags sold empty; briefcases; backpacks; duffel bags; wallets; business card cases; luggage tags; animal leashes; and dog collars

International Class: 018

First Use Date: 19930000

First Use in Commerce Date: 19940000

Basis: 1(a)

Porcelain and glass mugs; cups; drinking glasses; shot glasses; commemorative and decorative plates; coasters; paper plates; thermal insulated containers for food or beverage; portable beverage coolers; plastic sports bottles sold empty; and pet bowls

International Class: 021

First Use Date: 19930000

First Use in Commerce Date: 19940000

Basis: 1(a)

Towels; stadium blankets; cloth pennants; and cloth flags

International Class: 024

First Use Date: 19930000

First Use in Commerce Date: 19940000

Basis: 1(a)

Clothing, namely, t-shirts, sweatshirts, polo shirts, warm-up suits, jackets, rain ponchos, sweaters, jerseys, tank tops, shorts, sport shirts, baseball shirts, basketball jerseys, golf sweaters, night shirts, boxer shorts, socks, hats, caps, sport caps, visor caps, beanies and ties

International Class: 025

First Use Date: 19930000

First Use in Commerce Date: 19940000

Basis: 1(a)

Sporting goods, namely, baseballs, footballs, golf balls, golf tees, golf bags, putters, golf club covers, racket covers, flying discs, and foam fingers; arcade-type electronic video games; playthings, namely, plush toys, and ride-on toys; playing cards

International Class: 028

First Use Date: 19930000

First Use in Commerce Date: 19940000

Basis: 1(a)

On-line retail store services featuring men's, women's and children's clothing, footwear, hats, accessories, sporting goods, gifts and novelty items

International Class: 035

First Use Date: 19930000

First Use in Commerce Date: 19940000

Basis: 1(a)

Entertainment services, namely, conducting athletic competitions; organizing intercollegiate, community and national sporting and cultural events; sports instruction; and providing musical, band, dance, theatrical and dramatic performances

International Class: 041

First Use Date: 19930000

First Use in Commerce Date: 19940000

Basis: 1(a)

ADDITIONAL INFORMATION

Prior Registration Number(s):

1844953

PROSECUTION HISTORY

2002-11-12 - Published for opposition

2002-10-23 - Notice of publication

2002-05-31 - Approved for Pub - Principal Register (Initial exam)

2002-05-31 - Examiner's amendment mailed

2002-05-15 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent (Owner)

SCOTT A. EDELMAN
GIBSON, DUNN & CRUTCHER LLP
2029 CENTURY PARK EAST
SUITE 4000
LOS ANGELES CALIFORNIA 90067-3026
United States

12/04/2002

TTAB

LAW OFFICES

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

JOHN C. McELWAIN
(843) 720-4302
INTERNET ADDRESS: JCM@NMRS.COM

LIBERTY BUILDING, SUITE 600
151 MEETING STREET
POST OFFICE BOX 1806 (29402)
CHARLESTON, SOUTH CAROLINA 29401
TELEPHONE (843) 853-5200
FACSIMILE (843) 722-8700
WWW.NMRS.COM

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December 2, 2002

BOX TTAB

NO FEE

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

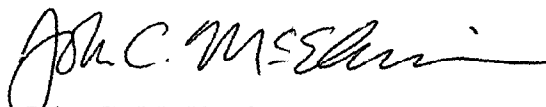
RE: University of Southern California v. University of South Carolina
Our File No.: 13524/01501

Dear Assistant Commissioner:

Please find enclosed the **Applicant and Petitioner's Response to Motion to Dismiss** in the above-referenced matter. By copy of this letter we are serving the opposing counsel.

Thank you for your assistance in this matter.

Very truly yours,



John C. McElwaine

JCM:mmk

Enclosure

cc: William H. Parham
Scott A. Edelman
Michael S. Adler

